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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING PART ONE OF THE SECOND INSTALMENT OF CLAIMS FOR SERIOUS PERSONAL INJURY OR DEATH (CATEGORY "B" CLAIMS)

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ANNEXES

The annexes, which consist of recommendations for each claimant by consolidated claim submission, are being provided to each respective Government or international organization separately due to their confidentiality.

INTRODUCTION

1. This is the second report that the Panel of Commissioners appointed for claims in category "B" submits to the Governing Council of the United Nations Compensation Commission (the "Commission") in accordance with article 37(e) of the Provisional Rules for Claims Procedure (the "Rules").[1]/

2. The Executive Secretary delivered the second instalment of claims to the Panel of Commissioners (the "Panel") on 20 September 1994 with a report pursuant to article 32 of the Rules. The second instalment includes all category "B" claims received by the Commission by 20 October 1994 that have been found to meet all the formal requirements as stated in the Rules and that were not included in the first instalment. The second instalment is intended to complete the review of "B" claims except for claims that may be filed at a later date for injuries/deaths resulting from mine explosions, claims that may be filed with respect to detained persons in Iraq who have been released or legally declared dead, claims that require further documentation, and claims filed by Governments after 20 October 1994.

3. The Panel commenced its work of reviewing claims in the second instalment at a first session held from 20 to 23 September 1994. Subsequent sessions were held from 18 to 21 October 1994 and 7 to 10 November 1994. The sessions were held in Geneva at the headquarters of the secretariat and were conducted in private.[2]/ The secretariat staff members attended all of the sessions of the Panel and provided information as

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[1]/ S/AC.26/1992/10, article 37(e): "Each Panel will report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be allocated to each Government or other entity for each consolidated claim. Each report will briefly explain the reasons for the recommendations and, to the extent practicable within the time-limit, contain a breakdown of the recommendations in respect of individual claims within each consolidated claim."

[2]/ Rules, article 30, paragraph 2; article 33, paragraph 2.

required. When necessary, the Panel was assisted by an experienced medical expert that the Executive Secretary appointed to assist the Panel and the secretariat in the review of category "B" claims.[3]/

4. The second instalment of category "B" claims is comprised of approximately 4,600 claims that has been divided into two parts for organizational purposes. Part One consists of 2,286 claims and Part Two contains approximately 2,300 claims. In the course of the three sessions referenced above, the Panel reviewed the claims in Part One of the second instalment.

5. This second report of the Panel of Commissioners takes as its foundation information provided and the recommendations contained in the first report submitted by the Panel[4]/ that was approved by the Governing Council in May 1994.[5]/ The principles established by the Panel in the first report and that were approved by the Governing Council in Decision 20 were applied to the claims in the second instalment. This second report concerns itself primarily with new methodological, legal and evidentiary issues raised by the claims in the second instalment. The attached annexes, however, list only those recommendations made by the Panel for the claims in Part One of the second instalment. Any issues raised by the claims in Part Two of the second instalment and not covered here will be discussed in a subsequent report together with the recommendations for the claims contained in Part Two.

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[3]/ Dr. Marcel Dubouloz, former Deputy Medical Director of the Medical Division of the International Committee of the Red Cross, Secretary General of the International Society of Disaster Medicine.

[4]/ "Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category "B" Claims)," S/AC.26/1994/1, (hereinafter referred to as the "first report").

[5]/ "Decision Concerning the First Instalment of Claims for Serious Personal Injury or Death (Category "B" Claims) taken by the Governing Council of the United Nations Compensation Commission at its 43rd Meeting held on 26 May 1994 in Geneva," S/AC.26/Dec. 20 (1994), (hereinafter referred to as "Decision 20").

I. PROCESSING METHODOLOGY

A. Processing of claims by the secretariat

6. The methodology that was used to process the claims in the second instalment is similar to the one applied for the processing of the claims in the first instalment. While some modifications were introduced, they do not depart from the main methodological principles outlined in the first report.[6]/ The reasons for such modifications are twofold. Firstly, the secretariat benefitted from the Panel's experience with the first instalment which allowed for the adjustment of procedures to the increased number of claims in the second instalment (approximately 4,600 claims as compared to 1,119 claims). Secondly, in its assessment of the claims the secretariat was guided by the legal and evidentiary criteria already established by the Panel.

7. When a consolidated claim was received from a Government or other authorized entity,[7]/ the secretariat undertook the initial steps described in the first report.[8]/ The secretariat summarized the essential legal and factual issues of the claim on a worksheet. The preparation of the claims included, inter alia, the translation of particularly relevant documents (e.g., certificates of death, or medical documentation), and a preliminary examination of the claims by the medical expert. The information on the worksheets was then entered into a computerized claims database for the purposes of classifying and tracking the claims as well as checking for inter-category and intra-category multiple claims.

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[6]/ First report, pp. 7-11.

[7]/ For example, the United Nations Development Program (UNDP) and the United Nations High Commissioner for Refugees (UNHCR) have submitted claims on behalf of individuals who were otherwise not in a position to have Governments present their claims.

[8]/ First report, pp. 7-8.

B. Review of claims by the Panel

8. The Panel was presented with a preliminary classification of the claims and with an assessment of the claims prepared by the secretariat on the basis of the recommendations made by the Panel in its first report. The Panel then examined samples from the different classifications or groupings of claims in accordance with article 37(b) of the Rules and in accordance with the methodology approved previously by the Governing Council.[9]/ These sample claims were organized on a country-by-country basis.

9. In addition, the Panel examined all of the claims where the initial assessment would result in no compensation being awarded. These claims were also organized on a country-by-country basis. In this manner, the Panel has ensured that each claim for which no compensation is recommended has been individually reviewed. In instances where the Panel was convinced that a claim was well-founded but lacked necessary factual information, a final recommendation was postponed and the Government concerned was asked to provide more information concerning the particular claim.

10. When in the course of the checking of the claims by the secretariat it was discovered that some category "B" claims had been submitted twice by the same claimant, the Panel made its recommendation on the merits with respect to only one of the claims, and the duplicate claim was rejected. The Panel notes that the search for intra-category duplicate claims remains an ongoing process as the category "B" claims continue to be entered into the claims database. Moreover, the capacity of the computer to detect duplicate claims depends upon the existence and quality of the information contained on the claim forms that is entered into the claims database. In view of this situation, the Panel recommends that an accurate record of the individuals to whom awards are paid be kept by

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[9]/ Rules, article 37(b): "With respect to claims that cannot be completely verified through the computerized database, if the volume of claims is large, the panel may check individual claims on the basis of a sampling with further verification only as circumstances warrant."

Governments in order to minimize the risk of potential multiple recovery on the basis of duplicate category "B" claims.

11. On the basis of a report by the secretariat, the Panel also notes that some category "B" claimants have claimed for the higher amount of $US 4,000.00 or $US 8,000.00 in category "A" (claims for departure) which means that the claimant has agreed not to file claims in any other category. The Panel refers to the decision of the Governing Council in which it is stated that

> "for a category 'A' claimant to be eligible to file a claim in categories 'B', 'C' or 'D', he or she must have selected a lower amount under category 'A' (US$2,500.00 for individual claims or US$5,000.00 for family claims) and bearing in mind the application of Decision 17 [S/AC.26/Dec.17 (1994)] the Council has reached the following conclusions:
>
> First, any claimant who has selected a higher amount under category 'A' (US$4,000.00 or US$8,000.00) and has also filed a category 'B', 'C' or 'D' claim will be deemed to have selected the corresponding lower amount under category 'A';"[10]/

The Panel notes that pursuant to Decision 21 those claimants who have filed a category "B" claim and who have also filed a category "A" claim for a higher amount will have their category "A" claim adjusted to the corresponding lower amount. As a consequence, the Panel has made its recommendations for these category "B" claims, independent of the fact as to whether or not such claimants have filed category "A" claims for the higher amount.

II. NEW LEGAL ISSUES

12. All of the legal and evidentiary issues decided upon by the Panel of Commissioners in the first instalment appear again in the claims in the second instalment. The principles

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[10]/ "Multi-Category Claims," S/AC.26/Dec.21(1994), (hereinafter referred to as "Decision 21").

outlined by the Panel in its first report were applied to the claims in the second instalment that presented similar legal and evidentiary issues. New issues raised in the second instalment are discussed below.

A. Jurisdiction

1. Ratione personae /eligible claimants

(a) Exclusion of claims submitted by Iraqi nationals

13. The Governing Council decided that: "Claims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State."[11]/ The Panel had before it two claims by Iraqi nationals who hold the passports of other countries. Copies of the two passports were provided in each case. In both instances the nationality of the other State was obtained several years prior to the Iraqi invasion and occupation of Kuwait. The Panel therefore considers that these claimants hold the bona fide nationality of another State within the meaning of Decision 1 of the Governing Council.

(b) Claims submitted by Members of the Allied Coalition Armed Forces

14. Among the claims for "serious personal injury" or "death" were those involving members of the Allied Coalition Armed Forces which in principle are not recommended for compensation by the Panel pursuant to Decision 11 of the Governing Council.[12]/ However, the Panel had before it claims by members of the Allied Coalition Armed Forces that fall within the exceptional conditions stated in the same decision. These members of the Allied Forces were taken prisoners of war during coalition military operations against Iraq and their

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[11]/ "Criteria for the Expedited Processing of Urgent Claims," S/AC.26/1991/1, (hereinafter referred to as "Decision 1"), paragraph 17.

[12]/ "Eligibility for Compensation of Members of the Allied Coalition Armed Forces," S/AC.26/1992/11.

claims contain extensive medical documentation explaining the torture and injuries that were inflicted upon them by Iraqi authorities during their captivity. Many of the personal statements attached to the claim forms explain that beatings were administered to members of the Allied Forces so as to coerce them into releasing information. The Panel accordingly recommends that these claims be awarded compensation.

(c) Claims submitted for detained persons

15. Many claims were filed on behalf of persons who are asserted to be still in detention in Iraq. All of these claims were submitted by the Kuwaiti Government for alleged serious personal injury sustained by Kuwaiti nationals. The Panel confirms its recommendation in the first report that these claims be "suspended".[13]/

(d) Persons not explicitly listed on the claim form

16. In a number of death and injury claims, a document (e.g., a certificate of inheritance, or a medical report) indicates that in addition to persons listed as claimants on the form, there are other persons who could be eligible for compensation. In principle, the Panel does not consider as claimants persons whose names are not explicitly stated on the claim form. Exceptionally, the Panel recommends compensation when it is clear that other individuals, referred to in the documentation submitted, are claiming as well.

(e) Claim identified by national claim number only

17. Within the claims in the second instalment, the Panel considered a claim that was submitted by a Government with a national claim number but with no name indicated on the claim form. The Government affirmed that this particular claimant is its citizen, that it possesses copies of her complete identification papers and that the exit stamps in her passport prove that she was in Kuwait during the relevant time period. The claimant has stated that she was sexually assaulted by

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[13]/ See discussion at pages 15-17 in the first report.

Iraqi soldiers and that she suffered a miscarriage as a result. She also specifically requested that her name be withheld. The Panel, taking into consideration the above-noted elements, recommends that this claim be awarded compensation.

2. Ratione materiae/subject matter jurisdiction/losses suffered

(a) Claims submitted for the serious personal injury suffered by the deceased prior to death

18. In some cases, members of a family are claiming for the death of a relative, and at the same time they are also claiming for the serious personal injury suffered by the deceased prior to his/her death. The Panel held in a comparable situation that, when the deceased had not claimed for a serious personal injury prior to his/her death, "the executor cannot claim for the payment of an obligation that, at the time of the death of the injured person, had not yet arisen."[14]/ The Panel therefore does not recommend compensation for the serious personal injury suffered by the deceased prior to the death.

(b) Claims erroneously filed as injury claims

19. The Panel was presented with claims where the claimant had filed for "mental pain and anguish" only. A number of other claims were filed for serious personal injury and the Panel found, from the documentation submitted, that these claims were in fact for "mental pain and anguish." The Panel recommends that these claims be transferred to the category "C" Panel of Commissioners pursuant to article 32, paragraph 3 of the Rules.[15]/ The Panel emphasizes, however, that in transferring these claims it has not verified whether the claims meet the legal and evidentiary requirements for mental pain and anguish.

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[14]/ First report, p.20.

[15]/ See discussion at pages 21-23 in the first report.

B. Attribution of losses and damages to Iraq

1. Vehicular accidents

20. In its first report the Panel developed certain guidelines to assess the claims for serious personal injuries or deaths that occurred as a result of road traffic accidents.[16]/ Some of those road traffic accidents could be considered the result of "actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period [2 August 1990 to 2 March 1991] in connection with the invasion or occupation," or of "the breakdown of civil order in Kuwait or Iraq during that period."[17]/ The Panel recommends for compensation the serious personal injuries or deaths arising from such accidents as they were directly linked to the Iraqi invasion and occupation of Kuwait. For example, claims arising from an accident occurring between a civilian motor vehicle and an Iraqi military vehicle or resulting from drivers losing control over their vehicles during an air raid, were recommended for compensation.

21. Numerous claims within the second instalment concern road traffic accidents that occurred during official evacuations by buses organized by Governments for their citizens who were fleeing Kuwait or Iraq due to the Iraqi invasion of Kuwait. Governments often also organized bus transportation to an airport where those fleeing the invasion were then evacuated in specially chartered planes. A number of these vehicular accidents occurred near Amman, Jordan in September 1990.

22. In other instances reviewed by the Panel, individuals fled Iraq or Kuwait by automobiles or taxis. Many of these vehicles were overloaded with passengers and personal belongings and journeys were often undertaken under cover of night through arduous routes. Numerous claimants have described in their personal statements fleeing in convoys of vehicles through difficult terrain and under strenuous circumstances.

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[16]/ See discussion at pages 24-25 in the first report.

[17]/ Decision 1, paragraph 18.

23. The Panel recalls that in Decision 1 the Governing Council intended to award compensation for any serious personal injury or death suffered as a result of departing Kuwait or Iraq:

> "Claims must be for death, personal injury or other direct loss to individuals as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> . . . (b) Departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period;"[18]/

24. In the claims submitted for serious personal injury or death caused by vehicular accidents it appears that the persons concerned had no other choice but to try and reach their home by crossing the borders of Kuwait or Iraq on their own by whatever means available. The Panel took into account the particular circumstances of each case such as the hardship of travel, the parties involved, as well as the date, location and immediate cause of the accident, in recommending compensation for claims for serious personal injuries or deaths that resulted from vehicular accidents.

2. Other accidents

25. A number of claims were submitted for serious personal injuries or deaths caused by other types of accidents. The Panel recommends compensation for serious personal injuries or deaths resulting from accidents that are related to military operations. For example, compensation is recommended for those claimants who suffered serious personal injuries while running to escape gunfire or a bomb explosion.

26. On the other hand, some claims were reviewed by the Panel for serious personal injuries resulting from domestic accidents occurring during the relevant time period. The Panel took into account the link between these accidents and the Iraqi invasion and occupation of Kuwait. When the causal connection is too remote, the Panel does not recommend compensation for the claim. For instance, some persons filed

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[18]/ Idem.

claims for back injuries incurred when packing their personal belongings while preparing to flee Kuwait. Others incurred injuries while in their homes, as in the case of a child who was burned by a candle during an electricity stoppage.

27. Many claims were also submitted for accidents occurring in the workplace during the relevant time period in Iraq. The Panel does not recommend compensation in such instances when no evidence of a direct link can be found between the serious personal injury or death and the Iraqi invasion and occupation of Kuwait.

3. Lack of medical care

28. The Panel had before it many claims for serious personal injury or death concerning persons under medical treatment prior to the Iraqi invasion and occupation of Kuwait. The claimants explained that the lack of medical care during the relevant time period resulted in either the exacerbation of the health condition or in the death of the person. In considering these claims, the Panel confirms the position taken in its first report that

> "a serious personal injury or a death attributed to the lack of medical care, equipment or medicine must be the consequence of an acute deterioration, or of a very severe exacerbation, of the health condition of a person, and not just of an aggravation arising from the normal course and development of a preexisting illness or injury."[19]/

29. In addition, the Panel finds that a shortening of a person's life due to a lack of medical care, equipment or medicines is an "acute deterioration" of the person's health condition, even if that person had a very severe illness.

30. Some claims reviewed in the second instalment are based on a lack of medical care resulting from the inability of claimants to pay for health care outside of Kuwait. A number of these claimants emphasized that health care in Kuwait was provided free of charge to those who worked in Kuwait as well

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[19]/ First report, p. 27.

as to their families. The Iraqi invasion and occupation of Kuwait meant that many people, in addition to losing their employment and belongings, lost access to such free health care. For those persons with health conditions that required long-term or intensive health care, this situation imposed a financial burden that many could not afford and as a result deprived them of necessary medical treatment. The Panel therefore finds that such persons should be awarded compensation if the acute deterioration of a preexisting illness occurred within a reasonable time period after the person left Kuwait.

4. Stress-related illnesses

31. The Panel reviewed many claims forwarded by persons who were suffering from stress-related illnesses. Those persons who were illegally detained, taken hostage, or forced to hide were particularly susceptible to such illnesses. Bearing in mind the Governing Council's definition of a serious personal injury,[20]/ the Panel notes that the trauma caused by the incidents as enumerated in Decision 3, paragraph 2 can result in ongoing and debilitating physical disorders originating in the emotional processes of the individual.

32. The Panel had before it claims where persons were suffering from psycho-organic stress-related illnesses such as the dysfunction of internal organs, severe gastro-intestinal illnesses with substantial weight loss, chronic headaches, or painful skin rashes (e.g., eczema). These conditions often arose as a result of the claimant having been in hiding, having been detained, or having been held as a hostage. As these illnesses were a physical reaction requiring a course of medical treatment,[21]/ the Panel considers that such claims fall within the definition of "serious personal injury" directly

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[20]/ "Personal Injury and Mental Pain and Anguish," S/AC.26/1991/3, (hereinafter referred to as "Decision 3").

[21]/ Decision 3: "'Serious personal injury' does not include the following: bruises, simple strains and sprains, minor burns, cuts and wounds; or other irritations not requiring a course of medical treatment."

linked to the Iraqi invasion and occupation of Kuwait and compensation is accordingly recommended.

5. Heart attacks

33. Many claims have been submitted for injuries or deaths resulting from heart attacks due either to the shock of the invasion and the resulting events (e.g., death of a family member, loss of income, loss of possessions) or to a lack of medical care during the relevant time period. As was explained by the Panel in its first report,

> "[t]he events during the invasion and occupation of Kuwait often greatly impacted on people's health in such a way that in many cases they provoked the death or illness of individuals. For example, a fatal heart attack was caused by the stress and emotion of seeing one's son arrested by Iraqi Forces . . . ."[22]/

34. A new issue in cases before the Panel is to what extent heart attacks that occurred outside of Kuwait or Iraq after the cessation of hostilities, i.e., after 2 March 1991, are directly linked to the Iraqi invasion and occupation of Kuwait. According to the medical expert, a traumatic event such as the news of the death of one's child may provoke a heart attack within a few days of the date of the initial shock. A different situation arises, however, when a person is exposed to a chronic situation of stress as, for example, when a person is held as a hostage. As explained by the medical expert, such a person is at a greater risk of a heart attack within a month of the last exposure to the cause of chronic stress. At the same time, the expert referred the Panel to the medical literature according to which chronic stress can be determined to be the cause of a heart attack occurring three to six months later. After that period of time, a cardio-vascular incident can be considered to be related to other risk-factors.

35. Based on the above information, the Panel recommends compensation for claims when a person either suffered a heart

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[22]/ First report, p. 28.

attack or died from a heart attack within a reasonable time period after the traumatic event and the claim meets the evidentiary and legal requirements established by the Panel in its first report.

6. Injury or death caused by those other than Iraqi authorities

36. As in the first instalment, a number of claims in the second instalment have been put forward by Jordanian nationals who had been living in Kuwait before Iraq's invasion and who stated that the injuries or deaths suffered were the result of actions by Kuwaiti nationals or authorities. In response to such claims, the Panel reiterates the position it held in its first report that

> "in such cases there is no 'direct' link to the invasion and occupation of Kuwait because these acts were accomplished by authorities or persons and in places out of the control of the Iraqi authorities.
> . . .
>
> Therefore, while the Panel recognizes that the claimants in this group presented well-substantiated claims, and that under general principles of law these claimants would be entitled to claim for compensation for the injuries or death suffered, the Panel cannot recommend the payment of compensation from the Compensation Fund for them."[23]/

C. Evidentiary issues

37. The Panel applied the same evidentiary standards to the claims in the second instalment that it had applied to claims in the first instalment.[24]/ It should be noted that, as with claims in the first instalment, the Panel took into account the socio-economic characteristics, education and income level of claimants from different countries in the evaluation of the evidence presented by the claimants.

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[23]/ First report, p. 29.

[24]/ See first report, pp. 30-41.

38. A new evidentiary issue arose when claimants did not provide any proof of their identity. The category "B" claim form instructs the claimant to submit documentation confirming his/her identity and nationality, such as a photocopy of a passport or national identity card. In the first instalment, claimants usually submitted a photocopy of their passports, Kuwaiti civil identification cards, their family registration records, or travel documents that were issued by the relevant authorities to allow them to leave Kuwait or Iraq after the invasion. Claimants' passports or travel documents often contain visas that indicate that the claimant had been a resident of Kuwait or Iraq, or exit stamps from the Iraqi authorities that indicate that the claimant had departed from Kuwait or Iraq during the relevant time period.

39. In the second instalment a number of claimants did not attach any such identification to the claim form. Many of these claims, however, appear deserving of compensation on their merits. The Panel does not recommend compensation for these claims pending the submission by Governments of photocopies of the identification documents of the claimants.

III. RECOMMENDATIONS TO THE GOVERNING COUNCIL

40. Attached to this report are annexes listing the recommendations made by the Panel for the claims in Part One of the second instalment. These annexes contain the claimant's name, the UNCC claim number, the national claim number, the deceased's or the injured person's name, and the Panel's recommendation for each element of the claim, i.e., the recommendation for each deceased and each injured person included on the claim form. The annexes are organized by consolidated claim submissions pursuant to article 37(e) of the Rules. The annexes are being provided to each respective Government or international organization separately due to their confidentiality.

A. Overview of the claims

41. The following is a breakdown of the claims by country by type of loss. The total number of claims may be higher than the total number of claim forms submitted by Governments since one claim form may have been filed for more than one serious personal injury or for more than one death.

Breakdown of the Number of Claims by Country			
Second Instalment: Part One			
Country	**Serious Personal Injury**	**Death**	**Total**
Australia	7	2	9
Bahrain	0	1	1
Bangladesh	45	51	96
Belgium	4	0	4
Bulgaria	3	0	3
Canada	11	4	15
Egypt	100	59	159
Finland	1	0	1
France	24	1	25
Germany	10	1	11
Greece	1	0	1
India	208	82	290
Ireland	17	0	17
Italy	14	0	14
Jordan	44	37	81
Korea	0	1	1
Kuwait	883	455	1338
Mauritius	1	0	1
Morocco	2	0	2
Netherlands	2	0	2
Pakistan	25	15	40
Philippines	1	0	1

Russian Federation	1	0	1
Somalia	6	4	10
Sri Lanka	0	2	2
Sweden	1	0	1
Uganda	1	0	1
United Kingdom	126	5	131
United States	40	1	41
UNDP Jerusalem	0	1	1
UNDP Kuwait	1	0	1
UNRWA Vienna	3	2	5
Total	1582	724	2306

B. Death claims when family members have submitted separate claim forms for the same deceased

42. Decision 1, paragraph 13 states that "no more than $10,000.00 will be paid for death . . . with respect to any one family (consisting of any person and his or her spouse, children and parents)." The instructions on the "B" claim form request that eligible family members claim for the same deceased on one claim form. The Panel notes, however, that separate claim forms have been filed by family members for the same deceased in different consolidated claim submissions. The secretariat has conducted a search to identify and bring together such claims so as to apply the $US 10,000.00 ceiling.

43. Filing separate claim forms for the same deceased affects the manner in which the Panel's recommendations for such claimants are reported. For example, separate claim forms may have been submitted by the wife of a deceased, his mother and father, and his son and two daughters. In the annexes being distributed to Governments and international organizations, the family claims submitted for the same deceased within each consolidated claim submission have all been listed together. The total amount awarded has been placed beside the name of only one family member, and a "zero" amount has been placed beside the names of each of the other family members,

notwithstanding the fact that the recommendation of compensation relates to all the family members filing a claim for the same deceased.

44. The Panel refers to Decision 1 of the Governing Council, and the instructions on the category "B" claim form which inform the claimant that for death claims he/she can claim for a fixed lump sum of $US 2,500.00 per person subject to a limit of $US 10,000.00 per deceased with respect to any one family. The Governing Council clearly intended that if up to four persons were claiming for the death of a family member, each of these persons would partake equally in the total amount awarded and receive $US 2,500.00. The Panel recalls that compensation for death under category "B" claims is awarded to each individual claimant and cannot be considered as part of the estate of the deceased. Basing itself on the intention of the Governing Council to compensate equally eligible family members claiming for the death of a spouse, parent or child, the Panel concludes that compensation should be distributed equally without differentiation among the claimants even if more than four family members have claimed for the same deceased.[25]/

45. Many of the claims filed separately by different family members for the same deceased have been submitted in different consolidated claim submissions. This means that some of the family claims for the same deceased may be included in the first instalment, some in Part One of the second instalment, and some in Part Two of the second instalment. Family claims for the same deceased that have been made in different consolidated claim submissions are marked in the annexes by an asterisk beside the claimants' names. The Panel recommends the verification by the Governments concerned of whether eligible family members claiming for the same deceased have

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[25]/ In the example cited above of claims by the wife of the deceased, his mother and father, and his son and two daughters, the recommended family award of the $US 10,000.00 maximum should be divided by six, so that each eligible successful claimant receives an equal share equivalent to $US 1,666.66.

had their claims submitted in different consolidated claim submissions in the first instalment and in Parts One and Two of the second instalment prior to distributing compensation.

46. Claims are recommended for compensation in the second instalment where the maximum amount of $US 10,000.00 has already been awarded to family members who submitted claims in the first instalment. Successful claimants whose claims are reported in Parts One and Two of the second instalment are entitled to receive compensation from the maximum amount awarded to family members in the first instalment even though "zero" amounts have been stated with respect to their claims in the annexes attached to this report.

C. Claims for serious personal injury when the injured person and claimant are different persons

47. Some claims in the second instalment were submitted for serious personal injuries on behalf of family members. In the first report the Panel held that as

> "a general rule, no one but the injured person himself/herself is entitled to claim for a serious personal injury. . . .
>
> The Panel also considers a third person entitled to claim on behalf of an injured person when it has found adequate evidence in the claim that the injured person was in no position to claim him/herself, and when in addition a sufficient link existed between the two (e.g., parent and adult child, husband and wife). In all such cases, the Panel recommends that the compensation be awarded only to the injured party, and not to the person who submitted the claim."[26]/

Where, for instance, a husband has submitted a claim on behalf of his wife, the annexes list both the claimant's name (in this example the husband's) and the injured person's name (the wife's). The Panel recommends that compensation for such serious personal injury claims be awarded to the injured person listed in the annexes, and not to the claimant.

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[26]/ First report, p. 19.

D. Claims for which compensation is recommended in part one of the second instalment

48. The Panel recommends that compensation be awarded for 1751 claims.[27]/ As noted above, the recommendations on the claims contained in Part One of the second instalment are presented for each country by consolidated claim submission. The amounts of compensation recommended for claims in Part One of the second instalment with respect to each consolidated claim submission are as follows:

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[27]/ The letter code in the annexes that indicates that the claim has been recommended for compensation is "Y"; this letter is located in either the column entitled "Decision Injury" or in the column entitled "Decision Death."

Total Amount Awarded by Consolidated Claim Submission		
Second Instalment: Part One		
Country	**Consolidated Claim Submission**	**Total Amount Awarded**
Australia	AU/290/2B	$5,000.00
	AU/350/3B	$0.00
	AU/418/4B	$5,000.00
Bahrain	BH/268/4B	$0.00
Bangladesh	BD/182/1B	$262,500.00
	BD/320/2B	$15,000.00
	BD/451/3B	$10,000.00
Belgium	BE/289/1B	$10,000.00
Bulgaria	BG/419/1B	$5,000.00
Canada	CA/279/1B	$17,500.00
	CA/410/2B	$2,500.00
Egypt	EG/363/1B	$47,500.00
	EG/460/2B	$165,000.00
	EG/479/3B	$62,500.00
	EG/510/4B	$52,500.00
	EG/648/6B	$17,500.00
	EG/688/7B	$2,500.00
	EG/699/8B	$12,500.00
	EG/775/9B	$17,500.00
	EG/813/10B	$2,500.00
Finland	FI/263/1B	$0.00
France	FR/171/3B	$20,000.00
	FR/222/4B	$22,500.00
	FR/230/5B	$2,500.00
	FR/309/6B	$17,500.00
Germany	DE/232/1B	$2,500.00
	DE/262/2B	$0.00
	DE/385/3B	$2,500.00
	DE/407/4B	$10,000.00

Total Amount Awarded by Consolidated Claim Submission		
Second Instalment: Part One		
Country	**Consolidated Claim Submission**	**Total Amount Awarded**
Greece	GR/403/1B	$0.00
India	IN/172/1B	$70,000.00
	IN/180/2B	$40,000.00
	IN/237/13B	$0.00
	IN/245/5B	$30,000.00
	IN/250/6B	$102,500.00
	IN/267/3B	$20,000.00
	IN/274/4B	$12,500.00
	IN/302/7B	$117,500.00
	IN/366/8B	$112,500.00
	IN/376/9B	$45,000.00
	IN/402/10B	$85,000.00
Ireland	IE/259/1B	$12,500.00
Italy	IT/253/1B	$7,500.00
	IT/318/2B	$5,000.00
	IT/406/3B	$17,500.00
Jordan	JO/301/2B	$202,500.00
Korea	KR/226/1B	$5,000.00
Kuwait	KW/191/4B	$1,182,500.00
	KW/273/5B	$405,000.00
	KW/368/6B	$55,000.00
	KW/430/7B	$427,500.00
	KW/546/8B/Part X	$980,000.00
Mauritius	MU/372/4B	$0.00
Morocco	MA/415/2B	$0.00
Netherlands	NL/243/1B	$0.00
	NL/384/2B	$0.00
Pakistan	PK/174/2B	$40,000.00
	PK/317/3B	$92,500.00

Total Amount Awarded by Consolidated Claim Submission		
Second Instalment: Part One		
Country	**Consolidated Claim Submission**	**Total Amount Awarded**
Philippines	PH/332/1B	$2,500.00
Russian Federation	RU/169/1B	$2,500.00
Somalia	SO/304/1B	$32,500.00
Sri Lanka	LK/333/2B	$0.00
Sweden	SE/371/1B	$2,500.00
Uganda	UG/196/1B	$0.00
United Kingdom	GB/194/7B	$12,500.00
	GB/206/8B	$62,500.00
	GB/252/9B	$30,000.00
	GB/297/10B	$27,500.00
	GB/345/11B	$37,500.00
	GB/375/12B	$45,000.00
	GB/393/13B	$17,500.00
	GB/421/14B	$20,000.00
United States	US/217/4B	$7,500.00
	US/342/5B	$27,500.00
	US/429/6B	$55,000.00
UNDP Jerusalem	PP/338/1B	$10,000.00
UNDP Kuwait	PP/420/1B	$2,500.00
UNRWA Vienna	PP/322/2B	$12,500.00
Total		$5,265,000.00

E. Claims for which no compensation is recommended

49. The Panel recommends that no compensation be awarded in 337 claims. The letter code in the annexes that indicates that no compensation has been awarded is "N"; this letter is located in either the column entitled "Decision Injury" or in the column entitled "Decision Death."

F. Claims transferred to the category "C" Panel of Commissioners ("transferred" claims)

50. The Panel requests that the Executive Secretary transfer 145 claims to the Panel of Commissioners dealing with the category "C" claims for mental pain and anguish, in accordance with article 32, paragraph 3 of the Rules.[28]/

G. Eligible claims for which no compensation is recommended at this stage ("suspended" claims)

51. The Panel "suspends" the recommendations on 20 claims for serious personal injury on behalf of persons that are asserted to be still in detention in Iraq, and for death claims filed for "missing persons". No award of compensation is recommended at this stage for these claims.[29]/

H. Claims that require further documentation ("other" claims)

52. The Panel requests that additional information be provided in 93 cases, as insufficient documentation has been presented in such cases for the Panel to make an informed recommendation on the merits of the claim. The Panel requests specific documentation in a number of claims. The annexes indicate the category of documentary evidence required under the letter codes M, L, F and O.[30]/ These codes indicate areas where further documentation is required. Explanation as to the type of additional information requested pursuant to each

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[28]/ The letter code in the annexes that indicates that a claim has been transferred to the category "C" Panel of Commissioners is "C"; this letter is located in either the column entitled "Decision Injury" or in the column entitled "Decision Death."

[29]/ The letter code in the annexes that indicates that a claim has been suspended is "S"; this letter is located in either the column entitled "Decision Injury" or in the column entitled "Decision Death".

[30]/ These letter codes are located in either the column entitled "Decision Injury" or "Decision Death" in the annexes.

of these codes is being separately provided to each respective Government or international organization.

I. Claims in the first instalment requiring further documentation

53. In the first instalment the Panel had before it 40 claims for death where no proof of family relationship had been submitted. The Panel requested that the relevant Governments provide additional information showing the family relationship between the claimant and the deceased. To date the Panel has received additional documentation for only three of these claims from three Governments. The Panel recommends compensation for the three claims that are listed in separate annexes. The amounts recommended are the following:

Iran	IR/00063/01B	$US 10,000.00
Pakistan	PK/00024/01B	$US 10,000.00
Thailand	TH/00095/01B	$US 10,000.00

J. Summary of recommendations

54. The following table summarizes by country all the recommendations made by the Panel:

Summary of Recommendations by Country

Country	Claims Recommended for Payment	Claims Not Recommended for Payment*	Transferred Claims	Suspended Claims	Other Claims	Total Amount Awarded
Australia	4	3	1	-	1	$10,000.00
Bahrain	-	1	-	-	-	$0.00
Bangladesh	68	8 (3)	1	-	16	$287,500.00
Belgium	4	-	1	-	-	$10,000.00
Bulgaria	2	-	-	-	1	$5,000.00
Canada	8	4	2	-	1	$20,000.00
Egypt	101	53 (3)	1	-	4	$380,000.00
Finland	-	-	2	-	-	$0.00
France	25	3	4	-	-	$62,500.00
Germany	4	-	7	-	-	$15,000.00
Greece	-	-	1	-	-	$0.00

Summary of Recommendations by Country						
Country	**Claims Recommended for Payment**	**Claims Not Recommended for Payment***	**Transferred Claims**	**Suspended Claims**	**Other Claims**	**Total Amount Awarded**
India	170	27 (48)	23	-	28	$635,000.00
Iran**	1					$10,000.00
Ireland	5	1	11	-	-	$12,500.00
Italy	12	1	2	-	-	$30,000.00
Jordan	40	32 (1)	2	-	7	$202,500.00
Korea	1	-	-	-	-	$5,000.00
Kuwait	1133	132	42	20	19	$3,050,000.00
Mauritius	-	-	1	-	-	$0.00
Morocco	-	1	-	-	1	$0.00
Netherlands	-	1	1	-	-	$0.00
Pakistan**	1					$10,000.00
Pakistan	30	6	2	-	4	$132,500.00
Philippines	1	-	-	-	-	$2,500.00
Russian Federation	1	-	-	-	-	$2,500.00
Somalia	8	2	-	-	-	$32,500.00
Sri Lanka	-	-	-	-	2	$0.00
Sweden	1	-	-	-	-	$2,500.00
Thailand**	1					$10,000.00
Uganda	-	-	1	-	-	$0.00
United Kingdom	94	4	36	-	6	$252,500.00
United States	35	3	4	-	-	$90,000.00
UNDP Jerusalem	1	-	-	-	-	$10,000.00
UNDP Kuwait	1	-	-	-	-	$2,500.00
UNRWA Vienna	2	-	-	-	3	$12,500.00
Totals	1754	282 (55)	145	20	93	$5,295,000.00

* Numbers in brackets indicate duplicate category "B" claims.

** Claims from the first instalment where further documentation had been requested by the Panel (see paragraph 53).

55. These findings are without prejudice to the conclusions and findings of panels for other categories of claims. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 10 November 1994

(signed) Mr. Mohamed Bennouna
Chair

(signed) Mrs. Denise Bindschedler-Robert
Commissioner

(signed) Ms. Fang Ping
Commissioner